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IN THE

Supreme Court of the United States

OCTOBER TERM, 1977

76-1608

No. [redacted]

STATE OF MICHIGAN,
Petitioner,

v.

LOREN TYLER and ROBERT TOMPKINS,
Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MICHIGAN

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PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MICHIGAN

Now comes the State of Michigan, by L. Brooks Patterson, Prosecuting Attorney in and for Oakland County, and Petitions this Honorable Court for a Writ of Certiorari to the Supreme Court of the State of Michigan.

CITATIONS TO OPINIONS BELOW

The decision of the Michigan Supreme Court was filed on February 14, 1977, and is reported at 399 Mich 564; _____ NW2d _____ (1977). That opinion reversed a decision of the Michigan Court of Appeals filed on November 1, 1973, which is reported at 50 Mich App 414; 213 NW2d 221 (1973). Copies of both opinions are included in the appendix to this petition.

JURISDICTION

The decision of the Michigan Supreme Court was filed on February 14, 1977. The jurisdiction of this Court is invoked under 28 U.S.C. 1257 (3).

Although the opinion of the Michigan Supreme Court is mildly ambiguous as to whether the searches complained of are invalid under the federal or state constitution, it refers to the Michigan constitutional search and seizure provision, Const 1963, Art 1, Sec 11, only once. 399 Mich at 569. An examination of the lengthy analysis shows that it is based entirely upon federal law. The only decisions cited as controlling are federal, except for two state cases, *Department of Natural Resources* v *Seaman*, 396 Mich 299, 314-317, 321-324; 240 NW2d 206 (1976), and *People* v *White*, 392 Mich 404; 221 NW2d 357 (1974), which are themselves based upon the Fourth Amendment.

The Michigan Supreme Court generally has followed this Court's decisions on search and seizure questions.

See, in addition to *White* and *DNR* v *Seaman*, *supra*, People v *Whalen*, 390 Mich 672, 676-683; 213 NW2d 116 (1973). The Court said in *People* v *Moore*, 391 Mich 426, 435; 216 NW2d 770, 775 (1974) (footnote 6 omitted):

> While Const 1963, art 1, §11 protects against "unreasonable searches and seizures", its proviso prohibiting the exclusion from evidence of "any narcotic drug, firearm, bomb, explosive or any other dangerous weapon, seized by a peace officer outside the curtilage of any dwelling house", precludes a construction of the Michigan search and seizure clause imposing a higher standard of reasonableness for searches and seizures of items named in the proviso than the United States Supreme Court has held applicable under the Fourth Amendment.[7]

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[7] *Cf. People* v *Turner*, 390 Mich 7; 210 NW2d 336 (1973) (entrapment); *People* v *White*, 390 Mich 245; 212 NW2d 222 (1973) (double jeopardy), where this Court established standards higher than the Federal standards.

On December 22, 1970, Respondents made a timely pre-trial motion to suppress evidence on the ground of an illegal search and seizure, and made similar motions each time disputed evidence was introduced at trial (R. 188-192, 741-747). The Fourth Amendment right against unreasonable searches and seizures was thereby raised and preserved by clear implication.

QUESTIONS PRESENTED

I

Whether a warrantless search of fire-damaged premises to determine the cause or origin of the fire, conducted after the fire has been extinguished and at the first opportunity to make a daylight visual inspection, is constitutionally permissible?

II

Whether a warrantless search of fire-damaged premises to gather evidence of the cause or origin of the fire, conducted weeks after the fire occurred and under circumstances which indicated that the occupant's expectation of privacy in those premises had dissipated, is constitutionally permissible?

III

Whether, in a prosecution for conspiracy to burn real property, a co-conspirator who was not on the premises at the time of the contested searches, who had no possessory or proprietary interest in the premises, and who was not charged with a possessory offense, has standing to raise the issue of an unconstitutional search and seizure?

CONSTITUTIONAL PROVISION INVOLVED

The constitutional provision which this petition involves is:

Constitution of the United States, Amendment IV:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

STATEMENT OF FACTS

Loren Tyler and Robert Tompkins were convicted of conspiracy to burn real property. Tyler was also convicted of burning real property and burning insured property with intent to defraud.

The fire occurred at Tyler's Auction in Waterford Township, Michigan, a building leased by Tyler where he conducted a retail furniture business (R. 210-213). Tompkins was a business associate of Tyler's (R. 1144-1155, 1237).

Physical evidence, taken by fire and police officials without a search warrant from the premises after the fire had been extinguished, was admitted at the trial over objection (R. 188-192, 741-747)

The fire began with two loud explosions shortly before midnight on January 21, 1970 (R. 69-70). The fire department arrived shortly thereafter. Fire Chief See discovered and seized two plastic containers, one partially filled with a flammable liquid, before the firefighters left (R. 145-146). Respondents did not challenge the admissibility of that evidence in the Court below.

Chief See conferred with Detective Webb of the police department at the scene shortly before the firefighters left. Webb's efforts to take pictures of the interior of the building were unsuccessful due to a malfunctioning camera and the fact that the building was filled with smoke and steam (R. 247).

By 4:00 a.m. on January 22 the fire was extinguished. The premises were thereafter left unattended until 8:00 a.m. when See returned with Assistant Fire Chief Somerville and together they briefly surveyed the area (R. 174-175, 206-207).

Most of the interior of the building and all the furnishings and fixtures had been almost completely consumed by fire. Almost all that remained were metal parts of furniture. The acoustical ceiling had fallen onto the floor, and the steel support beams above were twisted and had all been very badly damaged by heat and fire (R. 177-178). However, the northwest and northeast sections of the building were not as badly damaged. Though all the furniture fabric had been destroyed, a few pieces of wooden framework were merely scorched and damaged by smoke, and there were some business records on the floor which had not been completely destroyed (R. 178, 681-682, 709).

Assistant Chief Somerville, who did not know the identity of the landlord and had been informed that the tenant was in Florida (R. 191-192), returned with Detective Webb between 9:00 and 9:30 a.m. and discovered pieces of tape along a thin linear burn mark in the carpet of one room (R. 179, 251-253). The burn circled the room, went through a door, and continued down a stairway to an exit (R. 181-183). Pieces of carpet and wood containing the burn marks were removed, and at the trial admitted over objection (R. 185, 188-192).

Four days later, on January 26, Sergeant Hoffman of the Michigan State Police, Arson Section, took photographs of the interior of the building which were lost in the mail (R. 655-656).

On January 29, Hoffman and Somerville met with Respondent Tyler at the fire station (R. 705-706). Tyler was advised of his Miranda rights, and agreed to talk with the officials (R. 706-707). After having been informed of the condition of the burned building, Tyler gave the opinion that arson must have occurred (R. 708). Following a brief discussion of insurance and the contents of the building, Tyler agreed to go with the officials to survey the scene of the fire, where he pointed out various missing articles (R. 708-709). No photos were taken or evidence seized at that time.

Sergeant Hoffman returned without Tyler three weeks later, on February 16, and took more photographs, which were admitted at trial without objection (R. 657-658). He also found a piece of fuse and pieces of glass and other debris, which were admitted over objection (R. 660, 741-747).

All items of disputed evidence tended to show that the fire had been deliberately set, but none tended to identify the perpetrator.

REASONS FOR GRANTING THE WRIT

I

The Michigan Supreme Court, in an opinion reversing Respondents' convictions, extended the Fourth Amendment warrant requirement by holding that fire and police officials need an administrative search warrant under *Camara* v *Municipal Court*, 387 US 523 (1967), and *See* v *Seattle*, 387 US 541 (1967), before searching fire-damaged premises for the cause of the fire once that fire has been extinguished. The opinion relied upon this Court's distinction between regulatory, administrative, and criminal investigative searches, the rationale for which is the relative intrusiveness of each type of search. Petitioner contends that the Michigan Supreme Court's analysis is inappropriate to post-disaster investigations, which do not deal with occupied homes and operational businesses, and which are conducted prior to a determination of whether a crime has occurred.

Ordinarily, the motivation behind each type of search tends to control its scope and relative intrusiveness. However, an investigation of the scene of a fire or other catastrophe to determine its source is not so controlled. All fires and disasters have a cause, and searches for accidental and deliberate causes are likely to be identical or nearly so in scope. Regardless of whether officials are suspicious of arson,[1] a search for the cause or origin of a

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[1]The Michigan Supreme Court held that probable cause existed for a criminal investigative search warrant when Chief See discovered two plastic bottles, one partially filled with a flammable liquid, at the time of putting out the fire. 399 Mich at 577. Yet the presence of flammable liquids, solvents, and polishes at a commercial establishment seems as consistent with an accidental fire as with arson. Petitioner contends that only upon the investigators' return the following morning, and their discovery of tape and a thin burn mark, was probable cause established.

fire is limited by its nature to burnt areas and possible sources of combustion. Though such an investigation is detailed and focused in its technical aspect, it is narrow and unobtrusive in its potential for abuse and invasion of privacy.

The scope of the search in this case was statutorily limited, as was that in *United States* v *Biswell*, 406 US 311, 315 (1972). Michigan Compiled Laws, Sec 29.6, provides:

> The director or any officer is authorized to investigate and inquire into the cause or origin of a fire occurring in this state resulting in loss of life or damage to property, and for that purpose may enter, without restraint or liability for trespass, any building or premises and inspect the same and the contents and occupancies thereof.

This provision allows investigations only into the cause or origin of a fire. Though such a search would be broad enough to discover the means by which a fire had been deliberately set, the statute does not purport to allow the wide-ranging criminal investigative search commonly directed toward identifying the perpetrator of a crime. Similar statutes are common throughout the United States,[2] suggesting that warrantless searches for the cause or origin of a fire are widely regarded as reasonable.

There is little, if any, reasonable expectation of privacy in premises that have been badly burned or damaged, at

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[2]*E.g.*, Ala Code, 55 §34; Ark Stat Ann, 82-817; Ga Code Ann, 92A-723; Hawaii Rev Stat, §132-5; Ill Rev Stat, 127½ §6; Kan Stat Ann, 31-137; Md Code Ann, 38A §33; Minn Stat Ann, 299F.04, 299F.08; Ohio Rev Code, §3737.08; Or Rev Stat, 476.070 (1); Pa Stat Ann, 53 §16598.

least in those areas likely to be the subject of an inspection for the cause or origin of the fire. Such premises are temporarily or permanently uninhabitable. Families and businessmen whose homes and buildings catch fire certainly have their privacy invaded or interrupted, but not as a result of government action. Firefighters and police are legitimately present to extinguish the blaze and limit its effect, to save lives and property, and to control individuals and crowds.

It is difficult to imagine circumstances under which firemen and police arriving at the scene of a fire could be construed as invaders of privacy, or as oppressive agents of the state. They arrive in a benevolent role, and, after extinguishing the fire, their duty to investigate the cause or origin of that fire furthers vital public and private interests. Victims of a fire are unlikely to have their privacy interrupted unreasonably by inspections of gas, fuel oil, or electrical systems, or of burnt areas of their homes or businesses, which do not involve an examination of personal papers and effects.[3] In the case of a nighttime fire, such an investigation should reasonably take place during daylight hours, after smoke and steam have dissipated sufficiently to allow unobstructed vision.

Fire insurance policies typically contain a clause requiring the insured to allow inspection of the premises by an agent of the insurance company.[4] Respondent Tyler's contracts contained such a clause (Exhibits P and

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[3]Even arsonists are protected in this respect, inasmuch as they have control over the timing of the fire, and can be presumed to have removed personal items beforehand.

[4]See, *e.g.*, Mich Comp Laws, 500.2832, lines 113-115; Cal Code, Ins §2071; NY Consol Laws, Ins Law §168, lines 113-115; Pa Stat Ann, 40 §636, lines 113-115.

Q), and an insurance adjustor assisted fire and police officials in the investigation of this case (R. 764-766). Petitioner does not contend that contractual consent to the inspection of fire-damaged premises by an insurance investigator is somehow transferred into consent to a similar inspection by law-enforcement officers. Such an agreement is, however, relevant to an occupant's expectation of privacy in the burned premises.

The crime of arson is unusual in that probable cause to believe it occurred ordinarily cannot be obtained without an investigation of the scene of the fire. In most cases, police search to find evidence which tends to identify the perpetrator of a known crime, and are not often confronted with a challenge to their search of a potential crime scene. Cases dealing with the intrusiveness of criminal investigative searches of premises usually presuppose the unchallenged existence of the corpus delicti of an offense — a prerequisite to probable cause — which is almost always established with the cooperation of the victim.

The Michigan Supreme Court recognized that the inspections in *Camara* and *See* were to uncover possible violations of health, fire, and building codes, which may constitute the corpus delicti of misdemeanors. Yet the public interest in determining the cause or origin of an actual fire or disaster is substantially greater than that in the discovery of code violations, each of which by itself involves only a slight possibility of future personal injury or property damage. Accordingly, the timing of the inspection, at the first opportunity at which a thorough visual examination of the scene is possible, is an important element of the need to search.

The Court below found especially significant the statement in *Camara*, *supra*, at 538, that, whatever the standards for an administrative search warrant, "they will not necessarily depend upon specific knowledge of the condition of the particular dwelling." But even the less-demanding standard of probable cause of *Camara-See* seems inappropriate to post-disaster investigations. Whatever reduced legislative or administrative standards might be applied to a routine preventive building, health, or fire code inspection based upon the passage of time, nature of the building, or condition of the area, a fire or other disaster resulting in personal injury or damage to property is a readily-ascertainable fact. The judgment of a disinterested magistrate should not be required to determine its occurrence, because no exercise of judgment is necessary.

Only Michigan and Indiana[5] require a search warrant for an investigation of fire-damaged premises. Other state[6] and federal[7] courts have permitted warrantless

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[5]*State* v *Buxton*, 238 Ind 93; 148 NE2d 547 (1958). Though there is an apparent split of authority in California, *cf Romero* v *Superior Court*, 266 Cal App 2d 714; 72 Cal Rptr 430 (1968), *with Swan* v *Superior Court*, 8 Cal App 3d 392; 87 Cal Rptr 280 (1970), the most recent case, *People* v *Saling*, 48 Cal App 3d 724; 122 Cal Rptr 1, 13-14 (1975), suggests that a warrantless investigation after the fire has been extinguished is permissible.

[6]*State* v *Cohn*, 347 SW2d 691 (Mo, 1961); *Bennett* v *Commonwealth*, 212 Va 863; 188 SE2d 215 (1972); *Stone* v *Commonwealth*, 418 SW2d 646, 652 (Ky App, 1967); *State* v *Rees*, 258 Iowa 813; 139 NW2d 406 (1966); *State* v *Murdock*, 160 Mont 95; 500 P2d 387 (1972); *State* v *Vader*, 114 NJ Super 260; 276 A2d 151 (1971); *State* v *Felger*, 19 Or App 39; 526 P2d 611 (1974).

[7]*United States* v *Gargotto*, 510 F2d 409 (CA6, 1974); *United States* v *Green*, 474 F2d 1385 (CA5, 1973); *Steigler* v *Anderson*, 360 F Supp 1286 (D Del, 1973).

searches for the source of a fire. Since arson for profit has become a serious problem, this Honorable Court should resolve the conflict in decisions, grant this petition, and hold that such searches are constitutionally permissible.

II

Sergeant Hoffman conducted a search of the burned-out building on February 16, three and one-half weeks after the fire and two and one-half weeks after having examined the premises with Respondent Tyler. At that time Hoffman seized a piece of fuse, pieces of glass, and other debris, all of which were admitted at trial over objection.

Petitioner contends that this search was merely a continuation of a search valid at its inception, and that it occurred at a time when Tyler no longer had a reasonable expectation of privacy in the premises.[8]

Tyler was the lessee, not the owner, of the burned building. At the time of the February 16 search he had failed to pay the rent on his month-to-month leasehold (R. 926, 928), although the owner of the building had agreed to let him leave his fire-damaged debris on the premises for an unspecified length of time (R. 927). All of Tyler's business records had been destroyed in the fire (R. 369), and the only records that remained belonged to LaLonde, the owner of the building (R. 883-884). The

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[8]Petitioner contends in Issue III that Respondent Tompkins never had an expectation of privacy in the premises.

building had been extensively damaged, and all of Tyler's commercial inventory had been destroyed.[9]

Tyler had been cooperative with investigators who had told him that they suspected arson. His attitude, expressed after having been read his Miranda rights, had been that he, too, suspected arson (R. 708), and was interested in discovering the identity of the perpetrators. He had acquiesced in a survey of the premises by Sergeant Hoffman (R. 708-709). The terms of his fire insurance contracts required that the premises be available for inspection by insurance adjustors (Exhibits P and Q), one of whom had assisted in the arson investigation (R. 764-766). Tyler never took any affirmative action to secure the premises, and what security there was was provided by fire and police authorities (R. 709).

This Court should uphold the admissibility of evidence found in a search conducted after Respondent Tyler no longer had a reasonable expectation of privacy in the burned premises.

III

Respondent Tompkins was not on the premises at the time of the contested searches, had no proprietary or possessory interest in Tyler's Auction, and was not

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[9]It may be more accurate to say that none of Tyler's commercial inventory remained. The prosecution's case tended to show that Tyler had moved most of his commercial inventory to a warehouse immediately before the fire, and had replaced it with worthless furniture (R. 388-390).

charged with a possessory offense. He lacks standing to raise the issue of an unconstitutional search and seizure under this Court's holding in *Brown* v *United States*, 411 US 223, 229 (1973).

The question of Tompkins' standing was raised before the Michigan Supreme Court, which refused to consider the issue[10] because the prosecution had not raised it in the Michigan Court of Appeals. 399 Mich at 571. In so holding, the Court exercised its discretion not to consider this federal question because of a procedural impropriety, although under Michigan law it had the power to do so. *People* v *Crittle*, 390 Mich 367, 370-371, 212 NW2d 196 (1973); *People* v *Moore*, *supra*, at 431; 216 NW2d at 773. Under these circumstances, this Court has jurisdiction to decide the substantive issue. *Williams* v *Georgia*, 349 US 375, 382-389 (1955).

Although the prosecution rarely if ever is granted the procedural latitude allowed defendants in raising federal questions, there are two good reasons for this Court to exercise its jurisdiction to decide the standing question.

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[10]Although the Court below expressly declined to consider this issue, its citation of authority, 399 Mich at 571, fn 7, suggests that the Court had one eye on the merits of Petitioner's claim and that it is inclined to grant standing to any co-defendant, contrary to this Court's holding in *Brown*, *supra*.

The Court's statement that, "Our disposition makes it unnecessary to decide whether a codefendant has standing to raise a search and seizure issue," would be unexceptionable if the Court's opinion upheld the search in this case, and Tompkins' conviction were thereby affirmed regardless of whether he had standing. The statement is difficult to understand in light of the Court's actual decision, however, as a ruling in favor of Petitioner's position on the standing issue would not have resulted in a reversal of Tompkins' conviction.

First, Respondent Tompkins was not prejudiced in any way by the prosecution's failure to raise this issue in a timely manner. Since the trial court's ruling was in favor of the admissibility of the evidence, he had to endure the trial and appellate process regardless of whether the standing issue had been litigated earlier.

Second, this Court's failure to resolve the standing question, if a decision on the merits in favor of Petitioner seems likely, would result in a retrial of Tompkins identical to his original trial. All of the disputed items of evidence would be admissible against him. His retrial could not be the least bit fairer,[11] or more constitutionally correct, than his first trial.

This Court should exercise its jurisdiction and hold that Respondent Tompkins had no standing to challenge the search and seizure in this case.

CONCLUSION

WHEREFORE, Petitioner respectfully requests that this Honorable Court grant this petition for a writ of certiorari to review the judgment of the Supreme Court of the State of Michigan.

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[11] "Tompkins' retrial would, in all likelihood, be less fair than his first trial, insofar as the prosecution would have difficulty mustering the same evidence seven years after the offense, and because it would give Tompkins an undeserved second chance at a not-guilty verdict.

OPINION OF THE SUPREME COURT

Docket Nos. 55396, 55397.
Argued September 13, 1974 (Calendar No. 18). —
Decided February 14, 1977.

50 Mich App 414; 213 NW2d 221 (1973) reversed.

LEVIN, J. Loren Tyler and Robert Tompkins were convicted of conspiracy to burn real property.[1] Tyler was also convicted of burning real property[2] and burning insured property with intent to defraud.[3]

The fire occurred in premises leased by Tyler where he conducted a retail furniture business. Tompkins was a business associate of Tyler.

Physical evidence, taken by police and fire officials without a search warrant from the premises after the fire was extinguished, was admitted at the trial over objection.

The question is whether the authorities may enter fire-damaged premises without a warrant after the fire is extinguished for the purpose of investigation and, if discovered, collection of evidence of arson.

The Court of Appeals held that the provisions of the Fourth Amendment and the corresponding provisions of this state's Constitution,[4] prohibiting "unreasonable searches and seizures", do not "apply to the investigation of burned premises to determine whether

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[1] MCLA 750.157a; MSA 28.354(1)

[2] MCLA 750.73; MSA 28.268.

[3] MCLA 750.75; MSA 28.270.

[4] Const 1963, art 1 §11.

the fire was the result of arson where some evidence of arson is found during the process of extinguishing the fire". The Court reasoned that "the investigation of a fire to determine if arson has been committed does not place a person under criminal investigation. It places the cause of the fire under investigation."[5]

We reverse and remand for a new trial.

The fire broke out shortly before midnight on January 21, 1970. The fire department arrived soon thereafter. Fire Chief See discovered and seized two plastic containers, one partially filled with a flammable liquid, before the firefighters left. Defendants do not challenge the admissibility of that evidence.

Chief See conferred with Detective Webb of the police department at the scene shortly before the firefighters left. Webb's efforts to take pictures of the interior of the building were unsuccessful.

By 4 a.m. the fire was extinguished. The premises were thereafter left unattended until 8 a.m., when See returned with an assistant fire chief and together they briefly surveyed the interior of the building.

The officials again returned to the scene of the fire between 9 and 9:30 a.m. and discovered a thin linear burn in the carpet of one room. The burn circled the room, went through a door and continued down a stairway to an exit. Pieces of carpet and wood containing the burn marks were removed, and at the trial admitted over objection.

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[5]*People* v *Tyler*, 50 Mich App 414, 418, 419; 213 NW2d 221 (1973).

Four days later, on January 26, a sergeant of the Michigan State Police, Arson Section, took photographs of the interior of the building which were lost in the mail. The sergeant returned with Tyler three days later, on January 29, but no evidence was then obtained. The sergeant returned again without Tyler three weeks later, on February 16, and took more pictures and removed part of a fuse found in the building and several pieces of glass, which were admitted in evidence over objection.

The Court of Appeals found that "[c]onsent for the numerous searches was never obtained from defendant Tyler".[6] While Tyler did accompany the State Police sergeant when he visited the premises on January 29, and may not have objected to that inspection, none of the evidence admitted over objection was obtained at that time.

The people contend that Tompkins, who, in contrast with Tyler, did not have a leasehold interest in the burned premises, has no standing to raise the search and seizure issue.[7] The prosecutor did not raise this

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[6]*Id*, p 418.

[7]*See Jones* v *United States*, 362 US 257; 80 S. Ct 725; 4 L Ed 2d 697 (1960).

The standing issue is discussed in Allen, *The Wolf Case: Search and Seizure, Federalism and the Civil Liberties*, 45 Ill L Rev 1 (1950); Kamisar, *Illegal Searches or Seizures and Contemporaneous Incriminating Statements: A Dialogue on a Neglected Area of Criminal Procedure*, 1961 U of Ill L Forum 78; Traynor, *Mapp* v *Ohio At large in the Fifty States*, 1962 Duke L J 319.

(continued on following page)

issue in the Court of Appeals,[8] and, therefore, it will not be considered.[9]

I

The primacy of the warrant requirement is well established.[10] "[E]xcept in certain carefully defined classes of cases, a search of private property without proper consent is 'unreasonable' unless it has been authorized by a valid search warrant." *Camara v Municipal Court of City & County of San Francisco*, 387 US 523, 528-529; 87 S Ct 1727; 18 L Ed 2d 930 (1967).

(continued from preceding page)

The Supreme Court of California, in *People* v *Martin*, 45 Cal 2d 755; 290 P2d 855, 857 (1955), allowed a codefendant to raise the search and seizure issue. This rule was reaffirmed in *Kaplan* v *Superior Court of Orange County*, 6 Cal 3d 150; 98 Cal Rptr 649, 653; 491 P2d 1 (1971). *Cf. United States* v *Valencia*, 541 F2d 618 (CA 6, 1976). The American Law Institute, in its proposed Model Code of Pre-Arrangement Procedure, has accepted the view that a motion to suppress things seized may be made by a codefendant who may himself be without standing. ALI Model Code of Pre-Arraignment Procedure (Official Draft No. 1, 1972), §290.1(5).

Our disposition makes it unnecessary to decide whether a codefendant has standing to raise a search and seizure issue.

[8]Defendants' joint brief in the Court of Appeals discusses the question of Tyler's standing, but does not refer to Tompkins' standing. In the people's brief, only Tyler's standing was challenged.

[9]*See Long* v *Pettinato*, 394 Mich 343, 349; 230 NW2d 550 (1975).

[10]*Vale* v *Louisiana*, 399 US 30, 35, 90 S Ct 1969; 26 L Ed 2d 409 (1970); *Coolidge* v *New Hampshire*, 403 US 443, 454-455; 91 S Ct 2022; 29 L Ed 2d 564 (1971); *Jones* v *United States*, 357 US 493, 497-498; 78 S Ct 1253; 2 L Ed 2d 1514 (1958); *People* v *White*, 392 Mich 404, 410; 221 NW2d 357 (1974).

The proscription of "unreasonable searches and seizures" and the warrant requirement

> "must be read in light of 'the history that gave rise to the words' — a history of 'abuses so deeply felt by the Colonies as to be one of the potent causes of the Revolution. * * *' [*United States v Rabinowitz*], 339 US [56], 69 [70 S Ct 430; 94 L Ed 653 (1950)]. The Amendment was in large part a reaction to the general warrants and warrantless searches that had so alienated the colonists and had helped speed the movement for independence. In the scheme of the Amendment, therefore, the requirement that 'no Warrants shall issue, but upon probable cause,' plays a crucial part. As the Court put it in *McDonald v United States*, 335 US 451 [69 S Ct 191; 93 L Ed 153 (1948)]:
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> " 'We are not dealing with formalities. The presence of a search warrant serves a high function. Absent some grave emergency, the Fourth Amendment has interposed a magistrate between the citizen and the police. This was done not to shield criminals nor to make the home a safe haven for illegal activities. It was done so that an objective mind might weigh the need to invade that privacy in order to enforce the law. The right of privacy was deemed too precious to entrust to the discretion of those whose job is the detection of crime and the

> arrest of criminals. * * * And so the Constitution requires a magistrate to pass on the desires of the police before they violate the privacy of the home. We cannot be true to that constitutional requirement and excuse the absence of a search warrant without a showing by those who seek exemption from the constitutional mandate that the exigencies of the situation made that course imperative.' *Id*, at 455-456." *Chimel v California*, 395 US 752, 761; 89 S Ct 2034; 23 L Ed 2d 685 (1969).[11]

In the development of the probable cause and warrant requirements, the United States Supreme Court has recognized three kinds of searches.

The first is the regulatory search, in which inspection is a "crucial part of the regulatory scheme", "[I]f inspection is to be effective and serve as a credible deterrent, unannounced, even frequent, inspections are essential. In this context, the prerequisite of a warrant could easily frustrate inspection; and if the necessary flexibility as to time, scope, and frequency is to be preserved, the protections afforded by a warrant would be negligible." *United States v Biswell*, 406 US 311, 315, 316; 92 S Ct 1593; 32 L Ed 2d 87 (1972).[12] The Court

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[11]*See also Boyd* v *United States*, 116 US 616, 625-627; 6 S Ct 524; 29 L Ed 746 (1886).

[12]Regulatory searches at or near international borders are accorded similar treatment. *See United States* v *Martinez-Fuerte*, ___US ___; 96 S Ct 3074; 49 L Ed 2d 1116 (1976), upholding a warrantless border search at a permanent checkpoint even though there was no reason to believe the vehicle contained an illegal alien.

concluded that "effective regulation of licensed firearm businesses is impractical without resort to a broad inspection power".[13]

Unannounced prophylactic inspections by fire department officials of theatres, department stores and other places where large crowds gather may be necessary to assure that unblocked exits and adequate fire extinguishers are maintained. In light of the public nature of the premises and the relative unintrusiveness of the inspection, a warrant may not be required.

A second kind of search is the so-called administrative search. Where an investigation is to determine the cause of a fire (*e.g.*, faulty wiring, malfunctioning furnace, natural gas leak) and to prevent such fires from occurring or recurring, the need for a warrant and the standard of probable cause are governed by *Camara*, *supra*.

In *Camara*, the United States Supreme Court held that a warrant was required for a routine annual inspection for housing code violations, rejecting the argument that "the individual and his private property are fully protected by the Fourth Amendment only when the individual is suspected of criminal behavior".

> "[W]e cannot agree that the Fourth Amendment interests at stake in these [administrative] inspection cases are merely 'peripheral.' It is surely anomalous to say that the

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[13]Greenberg, *The Balance of Interests Theory and the Fourth Amendment: A Selective Analysis of Supreme Court Action Since Camara and See*, 61 Cal L Rev 1011, 1021 (1973).

individual and his private property are fully protected by the Fourth Amendment only when the individual is suspected of criminal behavior. For instance, even the most law-abiding citizen has a very tangible interest in limiting the circumstances under which the sanctity of his home may be broken by official authority, for the possibility of criminal entry under the guise of official sanction is a serious threat to personal and family security. * * * [I]nspections of the kind we are here considering do in fact jeopardize 'self-protection' interests of the property owner. Like most regulatory laws, fire, health, and housing codes are enforced by criminal processes. In some cities, discovery of a violation by the inspector leads to a criminal complaint. Even in cities where discovery of a violation produces only an administrative compliance order, refusal to comply is a criminal offense, and the fact of compliance is verified by a second inspection, again without a warrant. Finally, as this case demonstrates, refusal to permit an inspection is itself a crime, punishable by fine or even by jail sentence." *Camara*, *supra*, pp. 530-531.

In the companion case of *See v Seattle*, 387 US 541; 87 S Ct 1737; 18 L Ed 2d 943 (1967), the Court applied the *Camara* analysis in holding that a warrant was required for an administrative search of business premises.

The Court reaffirmed *Camara's* requirement of a warrant for an administrative search in *G M Leasing Corp v United States*, — US —; — S Ct —; — L Ed 2d —; 45 USLW 4098; 20 Crim L Rptr 3035 (Jan 12, 1977), where it held a warrantless search by Internal Revenue Service agents, pursuant to a civil statute, unconstitutional.[14]

In *Camara*, the Court also held that probable cause for an administrative search would be determined by a less rigorous standard than in criminal investigations:

> " '[P]robable cause' to issue a warrant to inspect must exist if reasonable legislative or administrative standards for conducting an area inspection are satisfied with respect to a particular dwelling. Such standards, which will vary with the municipal program being enforced, may be based upon the passage of time, the nature of the building (*e.g.*, a multi-family apartment house), or the condition of the entire area, *but they will not necessarily depend upon specific knowledge of the condition of the particular dwelling*." *Camara*, *supra*, p. 538 (emphasis supplied).

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[14] *See, also, Barlow's, Inc* v *Usery*, ___ F Supp ___; 45 USLW 2316 (D Idaho, Dec 30, 1976) (three-judge court), holding a provision in the Occupational Safety and Health Act, 29 USC 657, authorizing the Secretary of Labor "upon presenting appropriate credentials" "to enter without delay and at reasonable times" any business establishment covered by the act, to be unconstitutional.

A warrant for an administrative search could thus be issued pursuant to "reasonable legislative or administrative standards" designed to permit fire officials to conduct investigations of the causes of fires to prevent their occurrence or recurrence.

It is apparent, however, that probable cause (although measured by a reduced standard) and, absent exigent or other special circumstances (prophylactic regulatory search, plain view, consent), a warrant are required even if the investigation of a fire is to determine "the cause of the fire under investigation" and does not "place a person under criminal investigation". The Court of Appeals erred in reasoning to a contrary conclusion.

The third kind of search is the criminal investigation, where officials seek evidence to be used against persons in a criminal prosecution. Such investigations require warrants based on probable cause to believe that evidence of a crime will be found.

The rationale for distinguishing, on the basis of the nature of the search, between regulatory, administrative and criminal searches, is the relative intrusiveness of the search. As stated in *Camara*, "a routine inspection of the physical condition of private property is a less hostile intrusion than the typical policeman's search for fruits and instrumentalities of crime". *Camara, supra*, p 530. The differing probable cause requirements reflect the greater need to protect against the more extensive and more intrusive criminal investigative search.[15]

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[15] "[A] lesser quantum of evidence is constitutionally required for [administrative] inspections because the search involved is less of an intrusion on personal privacy and dignity than that which generally occurs in the course of criminal investigation. This is a real and meaningful distinction. The concern of the inspector

(continued on next page)

While it may be no easy task under some circumstances to distinguish as a factual matter between an administrative inspection and a criminal investigation, in the instant case the Court is not faced with that task. Having lawfully discovered the plastic containers of flammable liquid and other evidence of arson before the fire was extinguished, Fire Chief See focused his attention on assembling proof of arson and began a criminal investigation.[16] At that point there

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(continued from preceding page)

is directed toward such facilities as the plumbing, heating, ventilation, gas, and electrical systems, and toward the possible accumulation of garbage and debris. These matters may be looked into in a much shorter period of time than it often takes to search for evidence of crime, and certainly no rummaging through the private papers and effects of the householder is required. Nothing is seized. A police search for evidence brings with it 'damage to reputation resulting from an overt manifestation of official suspicion of crime.' A routine inspection that is part of a periodic or area inspection plan does not single out any one person as the object of official suspicion. The search in a criminal investigation is made by armed officers, whose presence may lead to violence, and is perceived by the public as more offensive than that of the inspector. Police searches are conducted at all times of the day and night, while routine inspections are conducted during regular business hours. By their very nature and purpose, police searches usually must be conducted by surprise. In contrast, some inspections programs involve advance notice that the inspector will call on a certain date, and an inspector on his rounds will sometimes agree to return at a more convenient time if the householder so requests. This permits the owner or occupant to remove or conceal anything that might be embarrassing to him." LaFave, *Administrative Searches and the Fourth Amendment: The Camara and See Cases*, 1967 Sup Ct Rev 1, 18-20.

[16] The assistant fire chief testified concerning the searches on the morning following the fire:

"Q. So your purpose in being in the building was solely and exclusively for investigation and gathering of evidence?

"A. Yes, sir.

"Q. You were not there for any purpose of fire fighting?

"A. No, sir, I was not."

was probable cause for issuance of a criminal investigative search warrant.[17]

As the facts of this case illustrate, requiring a warrant would not burden unduly officials whose duty it is to extinguish fires and investigate their causes. Evidence acquired while firefighters are lawfully on the premises putting out the fire is admissible under the plain-view doctrine.[18] The owner of the property will often consent to a search. In other cases, as here, there will be

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[17]The Supreme Court declared in *Katz* v *United States*, 389 US 347, 356-357; 88 S Ct 507; 19 L Ed 2d 576 (1967), that it

> "has never sustained a search upon the sole ground that officers reasonably expected to find evidence of a particular crime and voluntarily confined their activities to the least intrusive means consistent with that end. Searches conducted without warrants have been unlawful 'notwithstanding facts unquestionably showing probable cause,' *Agnello* v *United States*, 269 US 20, 33 [46 S Ct 4; 70 L Ed 145 (1925)], for the Constitution requires 'that the deliberate, impartial judgment of a judicial officer * * * be interposed between the citizen and the police * * *', *Wong Sun* v *United States*, 371 US 471, 481-482 [83 S Ct 407; 9 L Ed 2d 441 (1963)]. 'Over and again this Court has emphasized that the mandate of the [Fourth] Amendment requires adherence to judicial processes,' *United States* v *Jeffers*, 342 US 48, 51 [72 S Ct 93; 96 L Ed 59 (1951)], and that searches conducted outside the judicial process, without prior approval by judge or magistrate, are *per se* unreasonable under the Fourth Amendment — subject only to a few specifically established and well-delineated exceptions."

[18]*Cardwell* v *Lewis*, 417 US 583; 94 S Ct 2464; 41 L Ed 2d 325 (1974); *Coolidge* v *New Hampshire*, 403 US 443; 91 S Ct 2022; 29 L Ed 2d 564 (1971).

probable cause to justify the issuance of a search warrant as part of a criminal investigation. If there is insufficient evidence to justify issuance of a warrant as part of a criminal investigation but there is a sufficient basis for an investigation within "reasonable legislative or administrative standards" to determine the cause of the fire, a warrant might issue on that basis.

If there are exigent circumstances, such as reason to believe that the destruction of evidence is imminent or that a further entry of the premises is necessary to prevent the recurrence of the fire, no warrant is required and evidence discovered is admissible.[19]

The exigent circumstances exception does not, however, justify a search after the emergency no longer obtains, and the justification for the exception has ceased to exist. We cannot accept the bald assertions of other courts to the contrary.[20]

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[19]*See, e.g., United States* v *Gargotto*, 510 F2d 409 (CA 6, 1974). The Court declared that where the fire had been recently extinguished and the firefighters were still working in the area where the records were found there were exigent circumstances justifying a warrantless search.

Similarly see Romeo v *Superior Court of Los Angeles County*, 266 Cal App 2d 714; 72 Cal Rptr 430 (1968) (search for hidden fires after explosions was reasonable), *United States* v *Green*, 474 F2d 1385, 1389 (CA 5, 1973) (upholding warrantless search for cause of fire after fire was extinguished, but before fire officials had determined fire's source and were uncertain whether it would recur).

[20]*Bennett* v *Commonwealth*, 212 Va 863, 188 SE2d 215 (1972) (warrantless search occurring day after fire is one that "the law has traditionally upheld in emergency situations"); *People* v *Kulick*, 57 Mich App 126; 225 NW2d 709 (1974) (search the day after fire was only a continuation of search valid at time of fire).

In the instant case there were no exigent circumstances justifying the searches made hours, days or weeks after the fire was extinguished. As expressed in *G M Leasing Corp, supra*, p —: "[t]he agents' own actions * * * in their delay for two days following their first entry, and for more than one day following the observation of materials being moved from the office, before they made the entry during which they seized the records, is sufficient to support the District Court's implicit finding that there were no exigent circumstances in this case".

II

The people argue that the evidence was taken by the fire and police officials pursuant to their statutory duties under MCLA 29.6; MSA 4.559(6), providing:

> "The director or any officer is authorized to investigate and inquire into the cause or origin of a fire occurring in this state resulting in loss of life or damage to property, and for that purpose may enter, without restraint or liability for trespass, any building or premises and inspect the same and the contents and occupancies thereof."

The argument is that because the Legislature has specifically authorized such searches, they are constitutionally sound.

In *Department of Natural Resources v Seaman*, 396 Mich 299, 315; 240 NW2d 206 (1976), we considered a

statute authorizing conservation officers to conduct a search on probable cause without a warrant.[21] We said: "[A] search without a warrant in order to be reasonable under the Fourth Amendment requires more than probable cause — exigent circumstances must also be present. *People v White*, 392 Mich 404; 221 NW2d 357 (1974)." We held that the statute must be construed to preserve its constitutionality, and read it as permitting a warrantless search only where there are exigent circumstances.[22]

We agree with an earlier panel of the Court of Appeals[23] which noted that rather than explicitly authorizing warrantless searches the statute before us is silent on the question. To preserve the constitutionality of the statute a warrant requirement should be read into it. The Supreme Court of Indiana, considering a similar statutory provision, reached the same conclusion. *State v Buxton*, 238 Ind 93; 148 NE2d 547 (1958). Similarly see *G M Leasing Corp v United States*, *supra*.

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[21] MCLA 300.12; MSA 13.1222.

[22] "Although MCLA 300.12; MSA 13.1222 does not mention the requirement of exigent circumstances to justify warrantless searches, it is clear that this provision was enacted to cover those situations in which it is not feasible to obtain a warrant. We are 'duty bound' under the Michigan Constitution to construe a statute in such a way as to uphold its validity. *People* v *Bricker*, 389 Mich 524, 528; 208 NW2d 172 (1973). Consequently, we construe MCLA 300.12; MSA 13.1222 as, *inter alia*, requiring the presence of exigent circumstances before conservation officers are authorized to conduct warrantless searches under the act." *Department of Natural Resources* v *Seaman*, 396 Mich 299, 315; 240 NW2d 206 (1976).

[23] *People* v *Dajnowicz*, 43 Mich App 465; 204 NW2d 281 (1972).

Although post-fire searches made solely for the administrative purpose of determining the cause and source of the fire may properly occur under reasonable guidelines and with *Camara's* reduced standard of probable cause, where the investigation turns to the collection of criminal evidence constitutional requirements cannot be subordinated to a sweeping grant of statutory authority.[24]

Even if the search is administrative, under *Camara* a warrant is required. To justify a warrantless search by labelling it "administrative" (*Bennett v Commonwealth*, 212 Va 863; 188 SE2d 215 [1972]) is therefore erroneous.

While the Legislature is not free to generally except searches and seizures for evidence of arson from the constitutional limitation, it may, as outlined in *Camara*, prescribe, in a narrowly drawn statute, reasonable standards to facilitate the issuance of administrative search warrants to determine the causes of fires to prevent their occurrence or recurrence.

III

The people contend alternatively that there is no reasonable expectation of privacy in property that has been burned. We can accept the premise of that contention, "the Fourth Amendment protects people,

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[24]We are unpersuaded by decisions of courts in other jurisdictions upholding warrantless post-fire searches on the ground that the searches were made pursuant to statutory authority. *Stone* v *Commonwealth*, 418 SW2d 646, 652 (Ky, 1967), *cert den* 390 US 1010; 88 S Ct 1259; 20 L Ed 2d 161 (1968); *State* v *Rees*, 258 Iowa 813; 139 NW2d 406 (1966) (relying on *Frank* v *Maryland*, 359 US 360; 79 S Ct 804; 3 L Ed 2d 877 [1959], which authorized civil inspections without warrants; *Frank* was overruled by *Camara*, *supra*, in 1967).

not places [and that] [w]hat a person knowingly exposes to the public, even in his own home or office, is not a subject of Fourth Amendment protection", *Katz v United States*, 389 US 347, 351; 88 S Ct 507; 19 L Ed 2d 576 (1967), without accepting the conclusion.

Simply because a person's home or place of business has been burned does not mean that he has no expectation of privacy regarding whatever of his possessions remains. A fire is not an invitation to any or all to enter to satisfy their curiosity or for any other purpose. It does not open the property to public scrutiny. The property continues to be protected by the law from looters and by the law and the Constitution from scrutiny of governmental officials.

Personal papers, family heirlooms and other objects may survive the fire; the owner has a justifiable interest in protecting such property. Although the premises may be uninhabitable, personal possessions may remain undestroyed; unless uninhabitability becomes tantamount to actual abandonment, there may still be a justifiable expectation of privacy.[25]

Some courts have upheld warrantless post-fire searches on the theory that there is no reasonable expectation of privacy in the burned premises[26] or that

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[25]"It seems that the primary defect with 'habitability' as a standard for determining fourth amendment protection where arson investigations are involved is that it should not be the only factor to receive consideration. Other factors which seem to bear on an expectation of privacy are: the amount of personal property remaining on the premises, the extent of destruction caused by the fire, the possibility of danger to the community from the fire and affirmative acts on the part of the individual demonstrating the existence, or lack thereof, of any expectation of privacy. It is also suggested that courts consider these other factors along with 'habitability' in determining whether fire-damaged premises are entitled to fourth amendment protection." Note, *Arson Investigations and the Fourth Amendment*, 30 Wash & Lee L Rev, 133, 145, fn 86 (1973).

[26]*State* v *Murdock*, 160 Mont 95, 103; 500 P2d 387, 391 (1972).

the premises have become uninhabitable.[27] We agree that a warrantless entry would not invade a constitutionally protected interest in privacy if the owner or occupant of the burned premises abandons the property[28] or if the premises are so completely destroyed that there no longer are recognizable objects of personal property. The record does not factually support a conclusion that Tyler had abandoned the fire-damaged premises.

V [sic]

Finally, the people contend that warrantless post-fire searches can be justified by the public interest in preventing fires, saving lives, protecting property and preventing insurance fraud.

There is a public interest in preventing and solving all crimes against persons or property. Constitutionally infirm searches and seizures may not be justified by the generalized, undifferentiated interest in protecting the public safety.

The United States Supreme Court, in distinguishing between regulatory, administrative and criminal investigative searches, has provided a framework for achieving a workable balance between the need for investigation of the causes of fires and protection of the individual's right of privacy.

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[27] *State* v *Vader*, 114 NJ Super 260; 276 A2d 151 (1971).

[28] *State* v *Felger*, 19 Or App 39, 46-47; 526 P2d 611, 615 (1974): "We need not decide whether a warrant was necessary for these subsequent inspections of the premises by fire and police officials because * * * defendant had already abandoned the tenancy".

If there are exigent circumstances, or the evidence is in plain view, no warrant is required. Nor is a warrant required for a prophylactic regulatory inspection of public places.

If there has been a fire, the blaze extinguished and the firefighters have left the premises, a warrant is required to reenter and search the premises, unless there is consent or the premises have been abandoned.

The standard of probable cause will vary depending on the nature of the post-fire search. If the authorities are seeking evidence to be used in a criminal prosecution, the usual standard (probable cause to believe that evidence of a crime will be found) will apply. Where the cause is undetermined, and the purpose of the investigation is to determine the cause and to prevent such fires from occurring or recurring, an administrative search may be conducted pursuant to a warrant issued in accordance with reasonable legislative or administrative standards or, absent their promulgation, judicially prescribed standards; if evidence of wrongdoing is discovered, it may, of course, be used to establish probable cause for the issuance of a criminal investigative search warrant or in prosecution.

The warrant requirement protects individual privacy from unrestrained exercise of governmental power. Enforcement of the principle that warrantless searches are an exception, justified only by special circumstances, and that warrants may issue only on a determination by a neutral magistrate of probable cause, albeit in this context a varying standard of probable cause, can be harmonized with effective law enforcement.

We hold that the warrantless searches were unconstitutional and that the evidence obtained was therefore inadmissible.

Reversed and remanded for a new trial.

KAVANAGH, C. J., and WILLIAMS and FITZGERALD, JJ., concurred with LEVIN, J.

COLEMAN, J., concurred in the result.

RYAN and MOODY, J., took no part in the decision of this case.

OPINION OF THE COURT OF APPEALS

Appeals from Oakland, Frederick C. Ziem, J. Submitted Divison 2 April 3, 1973, at Lansing. (Docket Nos. 15011, 15012.) Decided November 1, 1973. Leave to appeal granted, 391 Mich 762.

Before: McGregor, P.J., and Quinn and O.Hara,* JJ.

McGregor, P.J. These two arson cases require us to consider once again the constitutional validity of warrantless searches conducted by state fire officials.

The defendants were convicted by a jury of conspiring to burn real property in violation of MCLA 750.157a; MSA 28.354 (1). Defendant Tyler was additionally convicted of burning real property, MCLA 750.73; MSA 28.268, and burning insured property with intent to

*Former Supreme Court Justice, sitting on the Court of Appeals by assignment pursuant to Const 1963, art 6, §23 as amended in 1968.

defraud, MCLA 750.75; MSA 28.270. Defendant Tompkins was sentenced to 1-½ to 10 years in prison and Tyler was sentenced to 1-½ to 10 years for each crime, sentences to run concurrently. The offenses were alleged to have occurred on January 21, 1970.

The crucial and dispositive issue on appeal is whether certain evidence was improperly admitted at trial, such evidence having been allegedly obtained by an illegal search and seizure.

Prior to this Court's decision in *People* v *Dajnowicz*, 43 Mich App 465; 204 NW2d 281 (1972), defendants' constitutional assault on the legality of the instant search and seizure would have had little precedential support and been of doubtful merit, in light of past Michigan decisions.[1] However, with the advent of *Dajnowicz*, the issue has acquired a vitality and jurisprudential significance which demands our most careful and thorough consideration.

Our review of the transcript reveals the following pertinent facts concerning the acquisition of the evidence in question.

Between 2 and 2:30 a.m. on January 22, 1970, Chief See of the local fire department arrived at the scene of the fire and conversed with Lieutenant Lawson of the fire department. Although the blaze had been substantially extinguished, fire department equipment was still on the scene and firemen were watering the embers. See and Lawson entered the building through an open door and noted two containers on the floor, one partially filled with gasoline. After spending

[1] *See People* v *Chimovitz*, 237 Mich 247, 250; 211 NW 650, 651 (1927), and *People* v *Bailey*, 42 Mich App 359, 202 NW2d 557 (1972).

approximately one hour in the building, during which time Chief See noted the smell of gasoline, he called Detective Webb of the police department; Webb arrived at the scene at approximately 3:30 a.m. Detective Webb attempted to photograph the interior of the building but was unsuccessful due to the malfunctioning of his camera and the fact that the building was still filled with steam as a result of the firefighting activities. The two men spent approximately ½ hour in the building, when Webb left for the fire station, where he was later joined by See, who brought with him the containers. See and Webb then went to the police station, where the containers and the gasoline were stored. This evidence was admitted at trial, over defendants' Fourth Amendment objections.

Shortly after 8 a.m., January 22, 1970, Assistant Chief Sommerville of the fire department arrived at the scene of the fire with Chief See. Sommerville and See made a cursory examination of the interior of the building which had been almost entirely consumed by the fire. Sommerville then transported See back to the fire station, picked up Detective Webb, and returned to the scene of the fire, arriving between 9 and 9:30 a.m. Further investigation by Sommerville disclosed a linear burn in the carpeting of one room, approximately equal in width to the diameter of a pencil; this burn circled through the room, through a doorway and down a flight of stairs to an exit. On the stairway, pieces of tape were found near the burn mark. Sommerville and Webb left the scene and returned with the tools necessary to remove pieces of carpeting and wood which contained the burn marks. These items were seized between 10 and 11 a.m. on the day of the fire, and were admitted into evidence at trial over defendants' objections. In addition, certain photographs taken by Detective Webb were admitted.

Detective Sergeant Hoffman, from the arson investigation section of the Michigan State Police, took additional pictures of the premises on January 26, 1970; this film was lost in the mail when it was sent to Lansing to be developed. As a result, Hoffman rephotographed the scene on February 16, 1970; these photographs were later transposed to slides and were shown to the jury at trial, without objection. Certain additional evidence gathered by Detective Hoffman on February 16, 1970, gave rise to Fourth Amendment objections; this physical evidence included a piece of fuse found in the building and pieces of glass and other debris. Detective Hoffman testified that this additional physical evidence indicated that the fire had been precipitated by gasoline explosions. This evidence was admitted over objections of defense counsel.

No search warrant was issued in connection with the above investigation. Consent for the numerous searches was never obtained from defendant Tyler, the lessee of the building.

It appears that defendant Tyler had purchased the incorporated furniture businesses, conducted in the building, from one Maynard LaLonde, who leased the building to Tyler on a month-to-month basis. It is conceded that consent had been obtained from Mr. LaLonde for at least a portion of the investigation.

The dispositive issue on these appeals is whether the evidence obtained by fire and police officers from the burned premises without a search warrant was improperly admitted at trial over defendants' objection that it was the product of an unlawful search and seizure. Simply put, do the provisions of US Const, Am IV, and Const 1963, art 1, §11, apply to the investigation of burned premises to determine whether the fire

was the result of arson where some evidence of arson is found during the process of extinguishing the fire? Our negative answer is given with full recognition that it is contrary to *People* v *Dajnowicz*, 43 Mich App 465; 204 NW2d 281 (1972), but in accord with *People* v *Bailey*, 42 Mich App 359; 202 NW2d 557 (1972).

We reject the reasoning and the result reached in *Dajnowicz* for several reasons, the first of which is that the precedent relied on is *Camara* v *Municipal Court*, 387 US 523; 87 S Ct 1727; 18 L Ed 2d 930 (1967), which we find inapplicable to arson investigation cases.

Camara refused to permit the warrantless inspection of his residence in violation of the housing code. This was a crime under the code, and Camara was so charged. He sought a writ of prohibition in the state court to prevent prosecution on the basis that the ordinance authorizing the inspection was unconstitutional. The state courts denied the writ. The Supreme Court reversed, holding that Camara had a constitutional right to insist that the inspectors obtain a search warrant and that he could not be constitutionally convicted for refusing to consent to that inspection.

The principle of *Camara* was extended to places of business by *See* v *Seattle*, 387 US 541; 87 S Ct 1737; 18 L Ed 2d 943 (1967).

The *Dajnowicz* Court recognized that *Camara* dealt with administrative investigations but went on to hold that *Camara* applied to criminal investigations as well, and said:

> "It seems obvious to this Court that if a warrant is required in instances where there is an administrative inspection, a warrant is even more necessary where a person is under criminal investigation." *Dajnowicz*, *supra*, 470-471; 204 NW2d 284.

The fallacy in the language quoted is that the investigation of a fire to determine if arson has been committed does not place a person under criminal investigation. It places the cause of the fire under investigation.

To buttress its holding that *Camara* applied to criminal investigations, the *Dajnowicz* Court cited *State* v *Buxton*, 238 Ind 93; 148 NE2d 547 (1958), a case we find to be inapposite. In *Buxton*, the initial investigation a few days after the fire disclosed no evidence of arson. Subsequent investigation without a warrant was held to be an unreasonable search.

Secondly, state policy as legislatively established by MCLA 29.6; MSA 4.559(6)[2] authorizes investigation of the cause and origin of fires and provides for entry of the premises without restraint. A similar statute was upheld in *State* v *Murdock*, — Mont —; 500 P2d 387 (1972).

Thirdly, as stated in *Bailey*, *supra*, the purpose of the Fourth Amendment is to safeguard privacy and security of individuals against arbitrary invasions by government officials. The privacy and security of defendants were not disturbed by the investigations involved nor were the investigations arbitrary invasions.

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[2]The statute provides: "The commissioner or any officer is authorized to investigate and inquire into the cause or origin of any fire occurring in this state resulting in loss of life or damage to property, and for such purpose may enter, without restraint or liability for trespass, any building or premises and inspect the same and the contents and occupancies thereof."

Fourthly, the proscription of US Const, Am IV, and Mich Const 1963, art 1 §11, is against "unreasonable" searches and seizures. During the extinguishing of the fire, two containers were found, one partially filled with liquid, and the smell of gasoline was noted.' With this knowledge, further investigation, search and seizure were not only reasonable, they were mandated.

On the basis of this analysis of the Fourth Amendment issue involved, we conclude that the trial court did not err in admitting the evidence in question.

We have carefully examined defendants' remaining contentions. None require or justify reversal and all are of insufficient precedential significance to warrant extended discussion here.

Affirmed.

All concurred.